GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OTR TAX RULING 2006-01

Subject: Heating Oil Tax

Advice has been requested as to whether the gross receipts tax on heating oil under District of Columbia ("District") Official Code ("Code") section 47-2501 applies to a taxpayer that sells oil to a purchaser that uses it for manufacturing or industrial purposes only, and not for purposes of heating or warming residential or commercial properties.

FACTS

Company A, a state X corporation, sells certain types of oils, gasoline and kerosene in the District. Company A is qualified to do business in the District.

Company A sells No. 2 oil to Company C, a corporation qualified to do business in the District, that conducts a manufacturing operation in the District. The oil sold by Company A to Company C is used to power equipment utilized by Company C to manufacture product Y. In this regard, Company C purchases the oil sold by Company A for manufacturing or industrial purposes only, and not for purposes of heating or warming residential or commercial properties.

ISSUE

Does the District's gross receipts tax on heating oil under Code section 47-2501(a) apply to a taxpayer that sells oil to a purchaser that uses it for manufacturing or industrial purposes only, and not for purposes of heating or warming residential or commercial properties?

CONCLUSION

The District's gross receipts tax under Code section 47-2501(a) does not apply to a taxpayer that sells No. 2 oil for manufacturing or industrial purposes only, and not for purposes of heating or warming residential or commercial properties.

LEGAL ANALYSIS

District law provides that each person who, by any method of delivery, delivers heating oil to an end-user in the District must file an affidavit each month indicating the amount of its gross receipts from the sales or distribution of the delivery of heating oil to an end-user in the District. D.C. Official Code § 47-2501(a). District law further provides that after December 31, 2004, each person who delivers heating oil to an end-user in the District must pay a tax of 11% on those gross receipts from sales included in bills rendered after December 31, 2004 for

nonresidential customers, and 10% on those gross receipts from sales included in bills rendered after December 31, 2004 for residential customers. D.C. Official Code § 47-2501(a)(3).[1]

By way of an emergency regulation, OTR originally set forth its interpretation of the term "heating oil" for purposes of its imposition of the District's gross receipts tax on heating oil deliveries as follows:

> [T]he phrase "heating oil" means any grade of oil, including number 2, 4, and 6 grades of oil, used for the purpose of providing heat or warmth for residential and commercial properties.

9 DCMRA § 3515.1, Gross Receipts Tax on Heating Oil – Definitions, added on an emergency basis May 13, 1994. Under this regulation, Company A's sale of No. 2 oil to Company C would not be subject to the District's gross receipts tax on heating oil, since the oil sold by Company A to Company C was not used for the purpose of supplying heat or warmth for residential or commercial properties, but rather for supplying steam power for electrical generators. However, Regulation 9-3515.1 expired 120 days after its promulgation, without OTR ever issuing a final regulation on this matter. D.C. Official Code § 2-505(c).

Nevertheless, several factors favor a finding that the District's gross receipts tax on heating oil should not be imposed on Company A in this case. First, Code section 47-2501 imposes a gross receipts tax on deliveries of "heating oil." The ordinary, common-sense meaning of the term "heating oil" is oil used for the purpose of providing heat or warmth. In this case, Company A did not sell oil that was used for heating or warming purposes, but for a specific industrial use.

Second, while the Council could have imposed the gross receipts tax on all kinds of oil, it decided, instead, to tax only a certain type of oil, heating oil. The reference just to "heating oil" suggests that the Council intended to limit the tax authorized in Code section 47-2501 to cover only oil that is used for heat or warmth. Thus, it precludes the tax's application to oils that are used for non-heating or warming purposes, such as in a manufacturing process.

Third, OTR issued Regulation 9-3515.1 contemporaneously with the Council's enactment of the heating oil provisions of Code section 47-2501 under the "Omnibus Budget Support Act of 1994." See D.C. Law 10-128, approved by Mayor Sharon Pratt Kelly on April 14, 1994, effective as of June 1, 1994. As noted above, Regulation 9-3515.1 was issued on May 13, 1994, within thirty days following Mayor Kelly's approval of the law enacting Code section 47-2501.

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[1] Effective September 19, 2006, The "Natural Gas and Home Heating Oil Taxation Relief and Ratepayer Clarification Act of 2006," D.C. Act 16-0402, converted the District's heating oil tax from one imposed on sales to one imposed on the deliverer. Act 16-0402 requires each deliverer of heating oil to end-users in the District to file an affidavit with the Mayor, for sales included in bills rendered after September 30, 2006 and before the 21st day of each month beginning November 1, 2006, indicating the gallons of home heating oil that it delivered for final consumption in the District based on the preceding billing period. Beginning October 1, 2006, each deliverer of heating oil is required to pay a tax of $0.17 for each gallon of home heating oil delivered to all end-users in the District for the preceding billing period, and an additional tax of $0.017 for each gallon of home heating oil delivered to nonresidential end-users in the District for the preceding billing period.

Historically, courts have given great weight to government regulations issued contemporaneously with enactment of new statutes by legislative bodies. See, e.g., Consolidated Rail Corporation v. Darrone, Administratix of the Estate of LeStrange, 465 U.S. 624, 634 (1984) (court upheld ruling that employer railroad was prohibited from discriminating against disabled employee under the Rehabilitation Act of 1973, as interpreted by contemporaneous regulation); cf., Brentwood Liquors, Inc. et al. v. District of Columbia Alcoholic Beverage Control Board, Respondent. H&M Food Supply, Inc., T/A Metro Foods, Intervenor, 661 A.2d 652, 1995 D.C. App. LEXIS 122 (1995) (court reversed board decision granting liquor license, relying, in part, on two sets of board regulations issued contemporaneously that provided a similar standard on the permissible distance between retail licensees). The assumption is that the authors of a contemporaneous regulation had intimate knowledge of the legislature's intent when the law being interpreted by regulation was enacted.

This judicial deference to contemporaneous regulations also extends to tax cases. In Crow v. Commissioner, 85 T.C. 376, the U.S. Tax Court held that a former U.S. citizen who moved to Canada was not liable for capital gains tax since the 1942 U.S.-Canada Convention on Double Taxation did not allow for the imposition of U.S. capital gains tax on nonresident aliens of the U.S. In reaching this conclusion, the Court relied, in part, on the fact that "the contemporaneous regulations issued by the Treasury Department implicitly rejected such an application . . ." Crow, 85 T.C., at 381.

In Owens-Corning Fiberglas Corp. v. U.S., 199 Ct. Cl. 60 (1972), the Court of Claims rejected a taxpayer's action for interest on his overpayment of estimated tax. The taxpayer sought both a credit for and interest on the overpayment. The Court noted that under Treasury regulations issued contemporaneously with the Current Tax Payment Act of 1943, Owens, at 64, interest is disallowed on estimated tax overpayments when the taxpayer elects to apply the overpayment to estimated tax for the succeeding tax year. The Court upheld the regulations, observing that a contemporaneous regulation "must be upheld unless it is 'unreasonable or flouts the Congressional will," citing Birchenough v. U.S., 187 Ct. Cl. 702, 710, 410 F. 2d 1247, 1252 (1969), Owens, at 66. See also, P.L.R. 200102007, 2000 PLR LEXIS 1797 (January 12, 2001) (IRS upheld disallowance of deduction of certain amounts claimed as "mine development expenditures" under section 616 of the Internal Revenue Code and contemporaneous regulations promulgated thereunder).

Accordingly, the District's gross receipts tax under Code section 47-2501(a) does not apply to Company A's sale of No 2 oil to Company C since the sale is for manufacturing purposes only, and not for purposes of heating or warming residential or commercial properties.